

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6351 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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SOMABHAI MOTIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioners
SERVED for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/01/98

ORAL JUDGEMENT (Per C.K.Thakker, J)

This petition is filed by the petitioners directing the Special Land Acquisition Officer, Narmada Yojna, Division No.3, Respondent No.2 herein to pass an award for additional amount in their favour under Section 28 A of the Land Acquisition Act,1984 (hereinafter referred to as 'the Act') on the basis of the award passed by the District Court, produced at Annexure B and to grant consequential benefits on that basis.

2. The case of the petitioners was that they were the owners of the land which was acquired for construction of Narmada Project Irrigation. Awards were declared on 8.8.85. The amounts were paid which were accepted by the petitioners under objection. It was the say of the petitioners that at that time they could not apply for reference under Section 18 of the Act. However, some of the claimants whose lands were also acquired for the said project made necessary applications to refer the matter to a competent court under Section 18 of the Act. Reference was accordingly made and the District Judge, Bharuch passed an award on 30.9.1988 partly accepting the case of the applicants and by enhancing the amount alongwith the rate of interest.

3. According to the petitioners, when they came to know about the award passed by the District Court, Bharuch, they made an application under Section 28A of the Act to the respondent no.2 on December 28,1988. A prayer was made in the said application that they also be paid the difference according to the rate ordered to be paid by an award passed by the district court. The said application, however, came to be rejected by respondent no.2 by an order dated 15.6.89, only on the ground that as the notification under Section 4 was published prior to the Amendment Act of 1984 which came into force w.e.f. September 1984, the applicants were not entitled to the benefits and the applications were not maintainable.

4. The Learned Counsel for the petitioners contended that there is an error apparent on the face of the record on the part of the second respondent in rejecting the application. According to him, Sec.28 A of the Act enjoins upon the second respondent to redetermine the amount of compensation on the basis of award of the court. The condition for application of Sec.28 A is whether after the award passed by the Land Acquisition Officer any reference was made and an award was passed by a competent court. If the reply is in the affirmative, the condition precedent is satisfied and it was not open to the Land Acquisition Officer to reject the application

on any other ground.

5. In the instant case, it is not disputed even by the respondents that some of the claimants were aggrieved by the award passed by the Land Acquisition Officer and prayer was made by them to refer matters to a competent court. It is also an admitted fact that in the said reference, the amount was enhanced and award was passed by a competent court i.e. District Court, Bharuch. When those conditions were satisfied, it was obligatory on part of the second respondent to pass an appropriate order considering the award passed by the court.

6. Our attention was also invited by the Learned Counsel to two decisions of this court, in Becharbhai Karshanbhai and Othrs V/s. Special Land Acquisition Officer, Ahmedabad District (1992) 1 GLR 1 and Ramjibhai Barkhabhai & Othrs V/s. Second Extra Special Land Acquisition Officer, Ahmedabad (1992) 1 GLR 105. In Becharbhai's case, a Division Bench of this Court to which one of us was a party (C.K.Thakkar, J), an application was made under Sec.28 A of the Act for enhancement of compensation on the basis of the award passed by a competent court. It was held that the award passed by the Land Acquisition Officer must be modified to the extent of the award passed by a competent court. It was also observed by the Division Bench that Sec.28 A would be attracted even if the notification under Sec.4 was issued prior to the amendment of the Act. Similar view was taken in Ramjibhai Harkhabhai (*supra*) In that case also, the notification was issued prior to the amendment of 1984. The Division Bench, considering the ambit and scope of Section 28 A of the Act, held that the section was applicable to a case where an award was passed after the provision came into force. It was also held that the view which was taken by the authorities that the notification under Section 4 was issued before the provision came into force and hence, no benefit could be granted was not correct.

7. In our opinion, the point is concluded by the above decisions of this court. The order passed by the Special Land Acquisition Officer, therefore, deserves to be quashed and set aside. The order is accordingly set aside and the matter is sent back to the Special Land Acquisition Officer. The second respondent will now decide the matter by exercising powers under Section 28 A of the Act in the light of the law laid down by this court in the above two case. Rule is accordingly made absolute. In the facts and circumstances of the case, no

order as to costs.

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